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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted]64

JOHN A. METHEANY,
Petitioner,

vs.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Petitioner prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled cause on February 10, 1968.

OPINION BELOW

The opinion of the Court of Appeals (*infra*, p. App. 1) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on February 14, 1968. Motion for rehearing was denied on March 28, 1968.

The jurisdiction of this Court is invoked pursuant to 28 U. S. C. 1254 (1). Jurisdiction of the District Court rested on 18 U. S. C. 152.

QUESTION PRESENTED

1. Whether the Government was precluded by the principles of collateral estoppel from proving in a perjury trial a certain exact same set of facts which had previously been determined in petitioner's favor in a trial for concealment of assets, in which petitioner had been found not guilty.

STATUTE INVOLVED

18 U. S. C. 152

Section 152. Concealment of assets; false oaths and claims; bribery

Whoever knowingly and fraudulently conceals from the receiver, custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or from creditors in any bankruptcy proceeding, any property belonging to the estate of a bankrupt; or

Whoever knowingly and fraudulently makes a false oath or account in or in relation to any bankruptcy proceeding; or

Whoever knowingly and fraudulently presents any false claim for proof against the estate of a bankrupt, or uses any such claim in any bankruptcy proceeding, personally, or by agent, proxy, or attorney, or as agent, proxy, or attorney; or

Whoever knowingly and fraudulently receives any material amount of property from a bankrupt after the filing of a bankruptcy proceeding, with intent to defeat the bankruptcy law; or

Whoever knowingly and fraudulently gives, offers, receives or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof, for acting or forbearing to act in any bankruptcy proceeding; or

Whoever, either individually or as an agent or officer of any person or corporation, in contemplation of a bank-

ruptcy proceeding by or against him or any other person or corporation, or with intent to defeat the bankruptcy law, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation; or

Whoever, after the filing of a bankruptcy proceeding or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any document affecting or relating to the property or affairs of a bankrupt; or

Whoever, after the filing of a bankruptcy proceeding, knowingly and fraudulently withholds from the receiver, custodian, trustee, marshal, or other officer of the court entitled to its possession, any document affecting or relating to the property or affairs of a bankrupt,

Shall be fined not more than $5,000 or imprisoned not more than five years, or both. As amended June 12, 1960, Pub. L. 86-519, Sec. 2, 74 Stat. 217; Sept. 2, 1960, Pub. L. 86-701, 74 Stat. 753.

STATEMENT

Petitioner was indicted in five counts, one for concealment of assets of a bankrupt (Quality Upholstery, Inc.) and four counts of perjury arising out of the bankruptcy proceedings concerning said bankrupt.[1] The concealment count was severed for trial, and tried first, resulting in a verdict of not guilty.

The four perjury counts were later tried as the instant cause, resulting in guilty verdicts as to counts 3, 4, and 6, and a not guilty verdict as to count 5 (Tr. Vol. III, p. 407).

A substantial part of the Government's evidence adduced at the trial consisted of, and concerned, certain assets

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1. Petitioner was first convicted on all counts but his convictions were reversed because of misjoinder with a count charging only another defendant, not arising out of the same transactions. *Metheany v. United States*, 365 F.2d 90 (9 Cir.).

(checks) which the Government adduced at the concealment trial, and contended were assets of the bankrupt which petitioner had concealed. This fact issue had been decided adversely to the Government at the prior trial. This evidence did not relate to the alleged false testimony, but was admitted, over objection, for the claimed purpose of showing motive for petitioner's alleged false testimony. The Court of Appeals, although ruling that the Government was not precluded by the principles of collateral estoppel from adducing such evidence, found it to have been instrumental in influencing the jury to return a guilty verdict in the instant case (*infra,* p. App. 1).

Prior to the filing of the petition in bankruptcy, one Sandoval, a stockholder in Quality Upholstery, Inc., gave petitioner $5,800.00 of his personal money in trust to pay certain obligations of said corporation (Vol. I, p. 27). This money was disbursed by petitioner with an accounting. Two checks (Ex. 10A and 10B) were made payable to fictitious corporations. These checks totaled $1,285.80. After the bankruptcy proceedings were underway, petitioner gave Sandoval a check in the amount of $1,285.80 (Ex. 19) for return of this money. These exhibits were the core of the Government's case in the trial of the concealment count. They were admitted in the instant case over objection (Tr. Vol. I, pp. 12-13), and motion to strike (Tr. Vol. II, p. 335). In addition, substantial testimony concerning them was admitted over objection. All of this evidence, the Court of Appeals found, influenced the jury, but was not precluded by the principles of collateral estoppel.

REASONS FOR GRANTING THE WRIT

The decision below is in conflict with decisions in other circuits. *United States v. Kramer,* 289 F. 2d 909 (C. A. 2), and *United States v. De Angelo,* 138 F. 2d 466 (C. A. 3).

> "A 'rule of evidence' has been recognized 'which accords to the accused the right to claim finality with respect to a fact or group of facts previously determined in his favor upon a previous trial'." *United States v. De Angeles, supra,* at 468.

In *United States v. Kramer, supra,* where it was held that proof of a fact determined at one trial could not be made in a subsequent trial, it is stated:

> "Appellant's alternative contention rests on that important principle of law of judgments, unhappily dubbed 'collateral estoppel,' which 'operates, following a final judgment, to establish conclusively a matter of fact or law for the purposes of a later lawsuit on a different cause of action between the parties to the original action.' It is much too late to suggest that this principle is not fully applicable to a former judgment in a criminal case, either because of lack of 'mutuality' or because the judgment may reflect only a belief that the Government had not met the higher burden of proof exacted in such cases for the Government's evidence as a whole although not necessarily as to every link in the chain. Coffey v. United States, 1886, 116 U. S. 436, 442-443, 6 S. Ct. 437, 29 L. Ed. 684 (criminal judgment applied as collateral estoppel in civil case); United States v. Oppenheimer, 1916, 242 U. S. 85, 87, 37 S. Ct. 68, 61 L. Ed. 167; United States v. Adams, 1930, 281 U. S. 202, 205, 50 S. Ct. 269, 74 L. Ed. 807; Sealfon v. United States, 1948, 332 U. S. 575, 578, 68 S. Ct. 237, 92 L. Ed. 180; Hoag v. State of New Jersey, 356 U. S. 464, 470-471, 78 S. Ct. 829, 2 L. Ed. 913."

Cf. also *Uhrlich v. United States,* 145 F. 2d 693 (C. A. 5), and *Wheatley v. United States,* 286 F. 2d 519 (C. A. 10).

In the trial of the concealment count the Government contended, as the core of its case, that petitioner concealed the checks referred to in the Statement. The jury found this factual issue adversely to the Government. In the instant trial, the Government made the same proof and the same contention, on the theory that said concealment constituted petitioner's motive for testifying falsely at the bankruptcy proceedings. This is exactly what the principle of collateral estoppel prevents the Government from doing.

Not only is the decision of the Court of Appeals in conflict with the decisions cited above, which conflict should be resolved by this Court, but also it involves an important principle of Federal law affecting the administration of justice which should be settled by this court. The unsettled state of the law in this area is strongly demonstrated by the recent extensive review of the cases at 9 A. L. R. 3d 203. We respectfully submit that this case is a good vehicle for clarification of the law concerning collateral estoppel in criminal cases.

CONCLUSION

We respectfully submit that for the reasons stated above the petition for a writ of certiorari should be granted.

Respectfully submitted,

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(Appendix Follows)